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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,238

03/22/2004

Takeshi Kijima

119169

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25944

7590

11/03/2005

OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320

EXAMINER

WILSON, CHRISTIAN D

ART UNIT

PAPER NUMBER

2891

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,238

Applicant(s)

KIJIMA ET AL.

Examiner

Christian Wilson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03222004, 10042005.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: search history.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3 – 7, and 10 – 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Summerfelt.

Summerfelt (US 6,117,689) discloses a method of manufacturing an electrode by forming initial crystal nuclei **70** of an electrode material over a substrate **30** in an island pattern [Figure 11b], forming grown layers of the electrode material by causing the initial crystal nuclei to be grown [column 9, lines 1-10], where the substrate temperature is higher in the first step than in the second step [column 9, lines 20-30].

Regarding claim 3, Summerfelt discloses a method of manufacturing an electrode by forming by sputtering [column 3, line 30] initial crystal nuclei **70** of an electrode material over a substrate **30** in an island pattern [Figure 11b] and forming grown layers by evaporation [column 6, line 25] of the electrode material by causing the initial crystal nuclei to be grown [column 9, lines 1-10]. Summerfelt does not discuss the energy of the particles during these growth processes, but the applicant discloses in the specification [0069] that sputtering forms particles with an inherently higher energy than evaporation. Therefore, Summerfelt inherently discloses a

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method where the first growth process (sputtering) forms particles with a higher energy than the second growth process (evaporation).

Regarding claim 4, Summerfelt further discloses a first growth method of sputtering [column 3, line 30] and a second growth method of evaporation [column 6, line 25].

Regarding claim 5, Summerfelt further discloses forming a plurality of stacked electrodes by repeating the growth steps [column 2, lines 10-20].

Regarding claim 6, Summerfelt further discloses performing a heat treatment [column 10, line 61].

Regarding claim 7, Summerfelt further discloses forming an electrode of platinum (Pt) [column 7, line 45].

Regarding claims 10 – 12, it is noted that product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Since Summerfelt discloses the electrode, ferroelectric memory, and semiconductor device [column 2, lines 60-65] as claimed in claims 10 – 12, the claimed devices are not patentably distinct from those of Summerfelt.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Summerfelt in view of Norga *et al.*

Summerfelt teaches a two step growth method where the first step is performed at 600 °C and the second step is performed at a lower temperature than the first step [column 9, line 25], but does not discuss a second temperature lower than 200 °C. Norga *et al.* (US 6,545,856) teaches a second growth step with a temperature lower than 200 °C [column 9, lines 55-65]. It would have been obvious to one of ordinary skill in the art to use the second temperature of Norga *et al.* in the method of Summerfelt since Summerfelt teaches that this temperature would prevent the growth of many small grains which allows oxygen diffusion through the electrode material [column 2, lines 20-40].

5. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summerfelt in view of Basceri *et al.*

Summerfelt teaches a diffusion barrier layer 42, but does not discuss forming the layer after forming the electrode material with ruthenium (Ru), ruthenium oxide (RuO₂), hafnium oxide (HfO₂), or aluminum oxide (Al₂O₃). Basceri *et al.* (US 6,534,357) teaches a diffusion barrier layer over an electrode material formed of the claimed species [column 5, lines 40-45]. It would have been obvious to one of ordinary skill in the art to use the diffusion barrier layer of

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Basceri *et al.* in the method of Summerfelt since this layer prevent oxygen permeation to the electrode material [column 5, lines 50-55].

Conclusion

6. A copy of the search history is enclosed.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian Wilson whose telephone number is (571) 272-1886. The examiner can normally be reached on weekdays, 7:30 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bill Baumeister can be reached on (571) 272-1722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christian Wilson, Ph.D.
Primary Examiner
Art Unit 2891

CDW